U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 20 2013 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The director then dismissed the petitioner's untimely motion to reopen and reconsider, but moved to reopen the petition. The director again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences and as a member of the professions holding an advanced degree. The petitioner is a civil engineer currently employed as an engineer scientist with the
The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and several supporting exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner claims eligibility for classification as an alien of exceptional ability in the sciences. The record readily establishes that the petitioner's occupation qualifies as a profession and that he holds two advanced degrees from An additional determination regarding the petitioner's claim of exceptional ability would be moot. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on August 16, 2011. In an accompanying statement, counsel stated:

> [The petitioner's] research focuses on methodologies of estimating surface depression storage. Such research has proven beneficial for identifying spatial distribution of

surface depressions, characterizing depressional elements, and calculating the available volume within a drainage basin. Armed with the methods and techniques he developed, federal agencies can visualize the spread of surface depressions within an area and determine if a potential rainfall amount can cause adverse flooding problems for the citizens, given the available drainage infrastructure. . . . The outcome of [the petitioner's] research also makes it possible for the U.S. Environmental Protection Agency to assess the health of wetlands over a period of time and study endangered species . . . that dwell in these habitats.

, stated:

[The petitioner] is an Engineer Scientist whose contributions to the field of preservation and management of Florida's precious water resources have affected, and will continue to affect water resource protection and, in extension, wildlife and human health in the United States.

Due in part to [the petitioner's] efforts, the health of the citizens of the State of Florida and the country are largely protected. Florida consistently leads the nation in water resources protection in the areas of land management and conservation of water sources. This is largely due to the engineering and scientific work of people like [the petitioner]. His research in landscape surface depressions allows us to have a better understanding of the surface water run off processes, which allows us to build better hydrologic models for our water supply and pollution load reduction programs.

While the State of Florida needs talented individuals such as [the petitioner] to improve health and the environment, it is not the policy of the o petition for permanent resident status due to budget constraints.

addressed the intrinsic merit of the petitioner's occupation, but did not distinguish the petitioner from other qualified professionals in that occupation. With respect to "the policy of the ' the AAO will take this information into account, but no employer, public or private, can unilaterally exempt its employees from the labor certification requirement simply by declaring its refusal to participate in the process. The petitioner must still establish that a waiver will serve the national interest. *See NYSDOT*, 22 I&N Dec. 218 n.5.

Much of the petitioner's initial evidence addressed the claim of exceptional ability, and related to the regulations at 8 C.F.R. §§ 204.5(m)(3)(ii)(A) through (E). As noted previously, exceptional ability is not, on its face, grounds for the national interest waiver. Therefore, a detailed discussion of these materials would serve little practical purpose in the present decision

The petitioner described his work in greater detail:

My PhD research focused on the development of new techniques and methodologies for identification, extraction, and quantification of landscape surface depression

> storage capacity, and its application in hydraulic and hydrologic models to simulate the effect of changes in surface depression storage on the environment. Estimation of surface depressional storage capacity in large drainage basins is extremely important in order to understand its effect on wetlands, flooding, ecosystems, forests, habitats, and the economy. . . .
>
> However, measurement of watershed surface depressional storage is a challenge facing the scientific community for the past four decades. . . . Nevertheless, an accurate modeling of hydrologic processes . . . requires accurate estimation of surface depression storage as well as other major characteristics of the watershed. . . .
>
> My research focused on the development and application of mathematical modeling, optimization, statistical methods, and geographic information systems (GIS) to estimate surface depression storage. . . . Armed with the methods and techniques I developed, federal agencies can be able to visualize the spread of surface depressions within an area, and determine if a potential rainfall amount can cause adverse flooding problems for the citizens. . . .
>
> Using the cutting-edge technology developed from my research, FEMA [the Federal Emergency Management Agency] and other federal agencies can map spatially where surface depressions exist, quantify volume, and understand which areas are more prone to flooding. My techniques would augment FEMA's current floodplain mapping methodology to determine low, medium, or high flood risk areas. . . .
>
> The outcome of my research makes it possible for the U.S. Environmental Protection Agency (EPA) to assess the health of wetlands over a period of time and study endangered species of the United States that dwell in these habitats. This is because wetlands are mostly located at surface depressional areas.

The petitioner, in the statement excerpted above, stated that his methods are of use to federal agencies such as FEMA and EPA, but the petitioner submitted no evidence that those agencies use his work or have expressed interest in doing so. The petitioner mentioned "cutting-edge technology" but did not identify or describe it.

On September 17, 2011, the director issued a request for evidence (RFE), instructing the petitioner to "submit evidence to establish that the beneficiary's past record justifies projections of future benefit to the nation" (emphasis in original). In response, counsel protested that the "broad brush" RFE did not identify any specific deficiencies in the petition. The response included no substantive information or evidence relating to the waiver.

The director denied the petition on February 13, 2012, stating that the petitioner had not established eligibility under *NYSDOT*. The petitioner filed an untimely motion to reopen and reconsider on March 20, 2012. The director dismissed the motion, but reopened the proceeding on USCIS's own motion and issued a new RFE on May 14, 2012. In this second RFE, the director stated that the

petitioner had not submitted evidence to show how his "research leads to the building of better hydrologic models for water supply and pollution load reduction programs." The director acknowledged the petitioner's evidentiary submissions but found that they do not establish the petitioner's impact on his field of endeavor.

In response, counsel asserted that the May 2012 RFE, like the September 2011 RFE before it, is procedurally deficient. Nevertheless, counsel presented a substantive response to the second RFE.

The petitioner submitted an expanded version of his initial statement (with added portions printed in in blue ink). The petitioner stated:

> My research focused on the development and application of mathematical modeling, optimization, statistical methods, and geographic information systems (GIS) to estimate surface depression storage.
>
> The research resulted in development of software tools and "consistency zone" approach for estimating depression storage in coastal plain watersheds. The software tools were developed in ArcGIS software platform for automatic identification, delineation and computation of storage characteristics . . . [resulting in] the establishment of general criteria for identifying representative depression storage in flat coastal plains with land slope less than three percent. One benefit of this research is the fact that techniques should be reproducible in watersheds with similar characteristics throughout United States and globally.
>
> The methodology was applied to six (6) watersheds . . . within the USDA Forest Service Francis-Marion National Forest located in South Carolina. The research techniques developed accurately estimated depression storage in these watersheds. Depression storage determined via this approach was directly applied to DRAINMOD and DRAINWAT hydrologic models to simulate rainfall-runoff processes. Simulation results indicated depression storage determined by the research approach performed better than the traditional trial and error methodology used in the past for calibration hydrologic models. Hence, this research outcome results in building better hydrologic models. . . .
>
> The research methodology . . . has been adapted and employed in developing hydrologic models in . . . the most comprehensive and scientifically rigorous analysis of the St. Johns River ever conducted.

The record shows that the petitioner himself participated in the projects discussed above, as a graduate student in [redacted] and with his current employer in Florida. The petitioner did not show that other hydrologists outside of his own research circle have adopted the petitioner's methods, giving the petitioner's work national rather than regional impact.

Counsel stated that the petitioner "has authored and co-authored several prestigious works which have been cited." Counsel identified three articles. The petitioner submitted one article to ; the journal accepted the article in April 2012. Although counsel included this article at the top of list of "prestigious works which have been cited," the petitioner submitted no evidence of citation of this article. Counsel did, elsewhere, claim one citation of the article, which the AAO will discuss further below. Although newly-published, the article derives from the petitioner's work as a graduate student.

Regarding the second of the three named articles, counsel stated that the petitioner "**co-authored** Chapter 3 of the entitled " " The **peer-reviewed study** garnered tremendous review [*sic*], was **endorsed by the National Academy of Sciences** and was **published in the** (emphasis in original). Once again, the petitioner submitted no evidence of citation. There is also no evidence to clarify what counsel meant by the phrase "endorsed by the National Academy of Sciences." The petitioner documented that he was one of 12 co-authors of the chapter mentioned, but little else.

Counsel identified a third published work, stating that the petitioner's "2008 publication has been **widely cited**" (emphasis in original). The record shows citation of the petitioner's "2008 publication" (his doctoral dissertation), but counsel did not justify the term "widely cited." The petitioner documented only three citations, and all three citing article share a common co-author, who was also a co-author of the petitioner's new article in

Counsel identified a fourth citation, not documented in the record. Counsel claimed that "[a] manuscript submitted to [the] cited the petitioner's new article in One of the authors of this manuscript is who would therefore be citing his own work. Self-citation is a common and accepted practice, but it is not evidence of wider influence.

The petitioner has not shown, or even claimed, that a citation to his work has ever appeared in any work that did not have as a co-author. The term "widely cited" does not readily apply when the petitioner's entire claimed and documented citation history traces back to one person. It applies even less so when that one person is a long-time collaborator who supervised the very research that led to the cited articles.

In a letter, stated:

> I am presently a Research Hydrologist at
>
> I have known [the petitioner] since 2005 when he started his PhD program as a graduate student at the . . . Most of his research focused on field works at the Forest

> Service long-term experimental watersheds and related hydrologic modeling works under my supervision.
>
> I see [the petitioner's] PhD dissertation . . . as a significant contribution in current knowledge of assessing surface depression storage parameter, a very critical hydrologic characteristic of a watershed. . . .
>
> Most hydrological models including Storm Water Management Model (SWMM), Soil and Water Assessment Tool (SWAT), DRAINMOD and MIKESHE require depression storage capacity, a sensitive input parameter, for accurate prediction of rainfall-runoff processes. However, it is often difficult to accurately estimate the surface depressional storage parameter. [The petitioner] devised a new method to estimate depression storage using the cutting edge technology of GIS tools with digital elevation models (DEM). . . . The DEM based surface storage provides a capability to assess the spatially distributed nature of such depressions in a landscape – that are important in managing soil, water, vegetation, and other habitats.
>
> I have adopted and included the new techniques developed by [the petitioner] for estimating depression storage capacity in hydrologic modeling graduate/ undergraduate courses I teach at both
>
> What makes [the petitioner] unique and exceptional is his solid understanding and expertise in geographic information system science and its application in water resources engineering for solving complex environmental problems.

Six other witness letters accompanied the petitioner's response to the second RFE. an environmental lawyer who claimed no training or experience in the petitioner's field, evaluated the petitioner's credentials and stated that the petitioner's "expertise will probably have even greater national significance over time in an era of climate change."

stated:

> I had the privilege to work with [the petitioner] during his doctoral research. . . . Our research Center has employed [the petitioner's] innovative approach to estimating depressional storage on complex micro- and macro-topography to accurately identify spatial location of depression storage on coastal South Carolina watersheds.
>
> The recent publication of this method in one of the most important international hydrologic journals, Hydrological Processes, is recognition of the important scientific contribution in the field. . . .

> [The petitioner's] method of mapping and evaluating the land surface has been extremely beneficial and opened a new research area that promises to help close this knowledge gap.

stated:

> I met [the petitioner] in about 2005 or 2006 in my work on the Francis Marion National Forest in coastal South Carolina. [The petitioner] made several quality technical presentations . . . that I attended. As a visiting researcher and scientist, he conducted research . . . to develop an approach to watershed-scale surface depression storage capacity estimation. There is little known about how to quantify the detention and storage of water in the coastal plain, and his GIS spatial and mathematical modeling are working on ways to estimate this. His excellent work also has applications that may improve prediction of rainfall-runoff modeling at various hydrological scales.

With respect to the petitioner's influence on others, stated:

> I know his work has been beneficial to the Santee Experimental Forest and Center for Forested Wetlands, led by [The petitioner] has also collaborated on various studies with . . . and with other professors as and

The record identifies as one of collaborators, and therefore letter does not attest to independent application of the petitioner's methods.

in his second letter on the petitioner's behalf, provided technical details about the petitioner's role in various projects and asserted that the petitioner's "contributions . . . [are] greater than his peers with the same minimum qualifications."

biological administrator for the described his ongoing collaboration with the petitioner on the stated that the petitioner "is creating comprehensive standardized coverages from multiple diverse data sets and sources as well as identifying future opportunities for enhancing and expanding current databases. This type of work is highly technical and requires the special skill set that [the petitioner] possesses."

signed a letter on behalf of The letter reads, in part:

> [The petitioner] is currently a member of the and serves a critical role as the

> team engineer scientist. Since joining the he has served as the lead for developing standardized estuarine habitat GIS databases and maps for a northeast Florida wetland restoration plan that is currently under development. This plan is being created to guide future estuarine restoration efforts in Florida as well as serve as a framework for restoration on a national level.
>
> . . . . [The petitioner] has unique skills that assist the U.S. Fish and Wildlife Service's mission to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

The witnesses clearly hold the petitioner's work in high regard, but all of the witnesses have worked with the petitioner in some capacity, either during his student work in South Carolina or subsequently during his current work in Florida. Their statements about the utility and novelty of the petitioner's methods do not show that other research institutions or government bodies have adopted those methods, or that significant benefits have arisen as a result of replacing older methods with the petitioner's newer methods.

The director denied the petition on October 17, 2012. The director quoted from the various witness letters and discussed other submitted evidence, and concluded: "Although the beneficiary has been shown to be a competent Engineer Scientist in the field of ensuring the sustainable use and protection of water resources, it has not been established that a job offer waiver based on the national interest is warranted."

Counsel, on appeal, states: "The sole reason for the denial was the Service's inability to recognize that [the petitioner], to a greater extent than US workers having the same minimum qualifications, plays a significant role in the sustainability and protection of water resources." Counsel asserts that the petitioner's "methodology was applied and tested in nationally protected water bodies and preserves in South Carolina, North Carolina and in Florida." The petitioner trained in the Carolinas and now works in Florida; the use of his work in those locations is, therefore, to be expected, rather than seen as a sign of the importance and influence of his work. For all the assertions regarding the importance and novelty of the petitioner's methods, the petitioner has not documented the adoption of those methods by third parties in projects that do not, themselves, directly involve the petitioner or his close associates.

Regarding one such project, counsel states: "Although this estuarine habitat restoration planning guide was prepared for [the] state of Florida it serves as a model for the rest of the United States." The record, however, contains no evidence that other jurisdictions have, in fact, adopted it as a model. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner's collaborators and employers are confident of the superiority of the petitioner's methods, but the record does not show that others share that opinion.

Counsel contends: "[t]he document is now complete and has been widely adopted." Counsel does not elaborate or define "widely adopted." As noted previously, counsel claimed that the petitioner's work has been "widely cited," even though the record, at the time of the decision, showed only three or four citations, all of which appeared in papers by the petitioner's mentor, Counsel contends that is an authority in the field with vast and extensive experience," but this in no way implies that speaks for others in the field.

On appeal, counsel asserts that cited the petitioner's work in a 2009 doctoral dissertation for The petitioner submits no evidence to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Also, counsel omitted the 2009 thesis from the previous list of citations, and therefore the director was not able to take it into account when considering those citations. The previous submissions did, however, indicate that collaborated with on a 2011 article, and that is an adjunct professor at where the thesis originated. Counsel's unsupported claims, therefore, do not disassociate from the petitioner's citation history.

Counsel additionally argues:

> According to the AAO, counting citations is not the only means of measuring the impact of a researcher's work, but it is one way to do so. A citation count is not automatically disqualifying by itself, but it does mean that the petitioner must submit other credible, verifiable evidence to show how his work has influenced his field.

The petitioner, however, has not provided such credible, verifiable evidence. The petitioner's cited work derives from his now-completed graduate student work; the record does not show that the petitioner continues to produce new research for journal publications. Certainly, in his current position, the petitioner could influence the field in other ways, such as by developing methods that others adopt and use. In such an event, the standard is not whether the petitioner's work could hypothetically serve as a "model" for others to emulate, but whether others have, in fact, adopted and emulated the model.

In terms of Florida's adoption of plans that the petitioner helped to develop, the petitioner works for a Florida state government agency. As such, the development of such plans appears to be a basic element of his job rather than an unusual or influential achievement. Counsel states that the petitioner's "package was almost entirely endorsed by interested government agencies, a weighty NYSDOT factor." Counsel cites no passage from *NYSDOT* to support this claim. The precedent decision does not contain the phrase "interested government agency" or any similar phrase. The AAO notes that the petitioner in *NYSDOT* was, itself, a state government agency, and the beneficiary of that petition did not receive the waiver.

The record establishes that the petitioner performs useful work for his employer, and is well-qualified to do so. The record does not, however, demonstrate that the petitioner continues to produce influential

work that has had demonstrable impact outside of that employer and the geographic area it serves. The petitioner's earlier work as a graduate student appears to have attracted slightly more notice, due at least in part to continued promotion by who shepherded that work, but even if the petitioner had submitted much stronger evidence about the impact of his student work, such past efforts cannot indefinitely entitle the petitioner to the waiver. The waiver exists to ensure continued contributions, not solely to reward past ones in roles (such as that of a graduate student) that the petitioner no longer holds.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.